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Acting United States Trustee for Region 3¹

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION,

- and -

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

** All papers shall be filed in the lead case,
No. 19-30088 (DM)*

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

Date: June 11, 2019
Time: 9:30 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102
[ECF No. 1784]

**UNITED STATES TRUSTEE'S OBJECTION TO THE MOTION OF DEBTORS
PURSUANT TO 11 U.S.C. §§ 502(b)(9) AND 105(a), FED. R. BANKR. P. 2002, 3003(c)(3),
5005 AND 9007, AND B.L.R. 3003-1 FOR ORDER (I) ESTABLISHING DEADLINE
FOR FILING PROOFS OF CLAIM, (II) ESTABLISHING THE FORM AND MANNER
OF NOTICE THEREOF, AND (III) APPROVING PROCEDURES FOR PROVIDING
NOTICE OF BAR DATE AND OTHER INFORMATION TO ALL CREDITORS AND
POTENTIAL CREDITORS (ECF No. 1784)**

¹ Andrew R. Vara, Acting United States Trustee for Region 3, is acting in this appointment for Tracy Hope Davis, United States Trustee for Region 17, who is recused from the above-captioned cases.

1 In support of his objection (the “Objection”) to the Motion of Debtors Pursuant to 11
2 U.S.C. §§ 502(b)(9) and 105(a), Fed. R. Bankr. P. 2002, 3003(c)(3), 5005 and 9007, and B.L.R.
3 3003-1 for Order (I) Establishing Deadline for Filing Proofs of Claim, (II) Establishing the Form
4 and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date
5 and Other Important Information to all Creditors and Potential Creditors (ECF No. 1784,
6 “Motion”), Andrew R. Vara, the Acting United States Trustee for Region 3 (“U.S. Trustee”),
7 through his undersigned counsel, states as follows:
8

9 1. This Court has jurisdiction to hear the Objection.

10 2. Pursuant to 28 U.S.C. § 586, the U. S. Trustee is charged with the administrative
11 oversight of cases commenced pursuant to chapter 11 of title 11 of the United States Code (the
12 “Bankruptcy Code”). This duty is part of the U. S. Trustee’s overarching responsibility to
13 enforce the bankruptcy laws as written by Congress and interpreted by the courts. See United
14 States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.), 33 F.3d 294, 295-96
15 (3d Cir. 1994) (noting that the U.S. Trustee has “public interest standing” under 11 U.S.C. § 307,
16 which goes beyond mere pecuniary interest); Morgenstern v. Revco D.S., Inc. (In re Revco D.S.,
17 Inc.), 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a “watchdog”).

18 3. Pursuant to 11 U.S.C. § 307, the U.S. Trustee has standing to be heard with regard
19 to the Objection.

20 I.

21 Preliminary Statement

22 4. The Motion seeks Court approval of bar dates for filing claims, the format of
23 proof of claim forms, and proposed notices.² The U.S. Trustee recognizes the importance of
24 providing creditors with notice of deadlines in a cost-effective manner, and establishing a
25 process for the timely filing of pre-petition claims. The U.S. Trustee does not oppose entry of a
26 traditional bar date order for currently known creditors. Much of the relief being sought,
27 however, is inappropriate. Under the Bankruptcy Code, a claim is presumed allowed when filed.
28

² All capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

1 The Debtors inappropriately impose upon certain claimants, including most notably the proposed
2 wildfire claimants, standards approaching those required to defeat a motion brought under Rule
3 12(b)(6) seeking to dismiss a case for failure to state a claim, or which require the filing of
4 documents that typically are required with proofs of claim.³ Claimants who do not satisfy such a
5 standard will have their claims disallowed without proceeding through the objection process.
6 Claimants who have previously filed a proof of claim will be required to file a proof of claim
7 again. The Motion seeks advance authority for claims to be filed under seal without having to
8 satisfy the necessary legal standards therefor. This request is made because of the Debtors'
9 request that inappropriate personally identifiable information be included in proof of claim
10 forms.⁴ The Motion should therefore be denied to the extent that it seeks to establish anything
11 more than a traditional notice of bar date and claims process applicable to creditors with actual
12 prepetition claims known at this time.
13

14 **II.**

15 **Background**

16 5. On January 29, 2019 (the "Petition Date"), the Debtors commenced the above-
17 captioned cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.
18 See ECF No. 1. No trustee has been appointed in the Debtors' cases. See generally Case
19 Dockets

20 6. On February 12, 2019, the United States Trustee appointed an Official Committee
21 of Unsecured Creditors (the "Committee"). See ECF No. 409. On February 15, 2019, the
22 United States Trustee appointed an Official Committee of Tort Claimants. See ECF No. 453.

23 7. The Debtors filed the Motion on May 3, 2019.
24
25

26 ³ Given that the 2018 fires are less than one year old, it is quite possible for many claimants that not all of their
27 damages are presently known.

28 ⁴ On May 3, 2019, the Official Committee of Tort Claimants ("TCC") has filed its Motion of the Official
Committee of Tort Claimants Pursuant to 11 U.S.C. §§105(a) and 501 and Fed. R. Bankr. P. 3001(a) for Entry of an
Order Approving Proposed Model Proof of Claim form for Fire Claims and Related Procedures ("TTC Motion",
ECF No. 1824). The U.S. Trustee has recommended some minor revisions to the proposed TTC form but does not
oppose the TTC Motion.

III.
Statement of Facts

8. The Motion seeks approval of bar dates, forms of notice and proof of claim forms for the filing of claims. The Motion proposes three different bar date forms: a Wildfire Claimant Proof of Claim Form; a Wildfire Subrogation Proof of Claim Form; and, a Standard Proof of Claim Form for all claimants other than Wildfire or Wildfire Subrogation claimants. The Motion seeks a Bar Date of September 16, 2019.⁵ The proposed Wildfire and Wildfire Subrogation Proof of Claim forms request significantly more information than the proposed Standard Proof of Claim and significantly more information than is requested by Bankruptcy Official Form 410.

9. Paragraph 3(e) of the proposed Order would require Wildfire Claims that have previously filed a proof of claim (“POC”) to file a new claim using the Debtors’ proposed form or be precluded from participating in voting or distribution.

10. Paragraph 3(l) of the proposed Order would require a claimant to file a new claim based upon a filed amendment to the Schedules, even if the claimant has filed a claim prior to the filing of any amendment.

11. Paragraph 3(o)(6) of the proposed order provides that holders of claims that are not Wildfire or Wildfire Subrogation Claims who have previously filed a POC would be exempted from the requirement to file a new POC upon receiving notice of the Bar Date.

12. Paragraph 4 of the proposed Order provides that all supporting documentation submitted in connection with Wildfire POCs: “...shall remain confidential in these Chapter 11 cases and shall not be made available to the general public.” The same provision would provide the information to the Committees and the U.S. Trustee, but only if each party agrees to keep the information confidential. This provision is repeated in the various proposed Bar Date Notices (Exhibits B-1; B-2; and, B-3).

⁵ Paragraph 6-8 of the proposed Order (ECF No. 1784-1) actually provide for a bar date of 95 days from the giving of notice, so the actual date may be later than September 16, 2019 and will be reflected in the notices. The Debtors have acknowledged to the U.S. Trustee that this is the case. The U.S. Trustee observes too, that 180 days from the filing date of January 29, 2019 is July 28, 2019. The proposed bar date this complies with 11 U.S.C. §502(b)(9) with respect to a bar date for governmental entities.

1 13. Paragraph 5 of the proposed Order provides in part that a failure to file a claim in
2 a timely manner will result in the claimant being: "...forever barred, estopped and enjoined from
3 asserting such claims against the Debtors, their property, or their estates (or submitting a Proof of
4 Claim with respect thereto).

5 14. The Wildfire Claim Notice refers potential claimants to a dedicated website for
6 the filing of their claims: www.pgewildfireinfo.com. This page does not yet exist and it is not
7 yet known what will be on the page. Similarly, the proposed Customer Bar Date Notice (Exhibit
8 B-3) refers potential claimants to a dedicated website for the filing of their claims:
9 www.pgecustomerbardateinfo.com. This page does not yet exist and it is not yet known what
10 will be on the page.
11

12 15. The proposed Wildfire Claimant Proof of Claim form (Exhibit C-2) requires a
13 Claimant to identify with specificity the fire from which the Claim emanates. This Exhibit
14 would also require a claimant to provide copies of all supporting documentation supporting the
15 claim: "...proof of ownership, property appraisals, insurance documents and other detailed
16 information related to the claim "...such as proof of operation at the time of fire, federal tax
17 returns for the two years preceding the fire, monthly/annual profit and loss statements or W-9
18 forms...". If the claim is based upon a personal injury or wrongful death, a claimant is required
19 to provide a passport or driver's license, death certificate, autopsy findings or insurance benefit
20 summaries, hospital records and physician office visit records. None of this information is
21 required to be included in Official Form 410. On the other hand, the Debtors' proposed form
22 does not include questions as to whether any portion of a Wildfire Claim is secured or priority as
23 is required by Official Form 410.⁶ As to the Wildfire Related – Subrogation Insurers (Motion,
24 Ex. C-3), the Debtors require the claimants to comply with an additional step after their claims
25 are filed. This step includes the filing of supplemental information within 10 days after receiving
26 a request by Prime Clerk. See Questions 10-12.
27

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⁶ Although it is unlikely that a Wildfire claim might have a secured or priority status, it is not impossible and the proposed POC should so provide.

IV.
ARGUMENT

A. A Filed Proof of Claim is Deemed Allowed Unless a Party in Interest Objects

16. Bankruptcy Code Section 502(a) provides in pertinent part as follows: “A claim or interest, proof of which is filed under Section 501 of this title, is deemed allowed, unless a party in interest...objects.” Consistent therewith, Fed. R. Bankr. P. 3001(f) provides: “A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. The procedure for objecting to a claim is set forth in Federal Rule of Bankruptcy Procedure 3007, and requires among other things that an objection to a claim be filed and served at least 30 days before any scheduled hearing on the objection.

17. Here, the Debtor has proposed that Wildfire Claimants who have previously filed claims must file a new POC in order to have their claim deemed timely filed. This is entirely inappropriate. Any creditor of any kind that has previously filed a POC has an allowed claim. If the Debtors want to object to any such claim they have that right. The Debtors may not ignore the dictates of Bankruptcy Code Section 502(a) as to any claim which has already been filed.

18. Similarly, the proposal that an amendment to the schedules imposes a new requirement upon a claimant to file a POC or face the consequences thereof is entirely inappropriate as to any POC filed with respect to the claim prior to the filing of an amendment. The proper procedure is to object to the claim, not amend the schedules. The provisions purporting to affect amended schedules should exclude from them any requirement for a creditor who has previously filed a proof of claim to file another claim or be barred from a recovery in this case.

B. The Presumption of Public Access to Court Records

19. Federal Rule of Bankruptcy Procedure 5001(b) provides, in pertinent part, as follows: “All trials and hearings shall be conducted in open court and so far as convenient in a regular court room.” See In re Global Crossing Ltd., 295 B.R. 720, 723-24 (Bankr. S.D.N.Y. 2003). Thus, parties seeking to deny public access to court documents must overcome a strong

1 presumption. Neal v. The Kansas City Star (In re Neal), 461 F.3d 1048, 1053 (8th Cir. 2006);
2 Gitto v. Worcester Telegram & Gazette Corp. (In re Gitto Global Corp.), 422 F.3d 1, 6 (1st Cir.
3 2005).

4 20. In the bankruptcy context, the general rule of open access is set forth in Section
5 107(a) of the Bankruptcy Code, which provides, in part, that subject to certain limited
6 exceptions: “A paper filed in a case under this title and the dockets of a bankruptcy court are
7 public records and open to examination by an entity at reasonable times without charge.” 11
8 U.S.C. § 107(a). See In re Food Management Group, LLC, 359 B.R. 543, 553-55 (Bankr.
9 S.D.N.Y. 2007) (section 107 reflects Congress’ intent to favor public access to papers filed with
10 the Bankruptcy Court).

11 21. The policy of open inspection, codified generally in Section 107(a) of the
12 Bankruptcy Code, evidences the strong desire of Congress to preserve the public’s right of
13 access to judicial records in a bankruptcy proceeding. In re Orion Pictures Corp., 21 F.3d 24, 26
14 (2d Cir. 1994); In re Barney’s, Inc., 201 B.R.703, 707 (Bankr. S.D.N.Y. 1996) (“Congress did
15 not intend that sealed pleadings be the rule in bankruptcy cases”); In re Alterra Healthcare Corp.,
16 353 B.R. 66, 74 (Bankr. D. Del. 2006) (“Congress has codified the historical practice of open
17 access in bankruptcy”).

18 22. Limited exceptions to the general rule are contained in the Bankruptcy Code and
19 Federal Rules of Bankruptcy Procedure. See, generally, Food Management, 359 B.R. at 553-55.
20 Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue
21 orders that will protect entities from potential harm that may result from the disclosure of certain
22 confidential information. Section 107(b) provides in relevant part that: “[o]n request of a party
23 in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy
24 court may- (1) protect an entity with respect to a trade secret or confidential research,
25 development, or commercial information; or (2) protect a person with respect to scandalous or
26 defamatory matter contained in a paper filed in a case under this title.” 11 U.S.C. § 107(b).
27
28

1 23. Bankruptcy Rule 9018 defines the procedure by which a party may move for
2 relief under the Bankruptcy Code Section 107(b) and provides as follows:

3 On motion or on its own initiative, with or without notice, the court may make any order which
4 justice requires (1) to protect the estate or any entity in respect of a trade secret or other
5 confidential research, development, or commercial information, (2) to protect any entity against
6 scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to
7 protect governmental matters that are made confidential by statute or regulation. Fed. R. Bankr.
8 P. 9018.
9

10 24. Here, the proposed Wildfire POC and the proposed Wildfire Subrogation POC
11 forms request significantly more information than is typically required by Official Form 410.
12 Some of the information requested seeks personally identifiable information which should not be
13 included in a POC, such as social security or passport numbers, to name but two. Personally
14 identifiable information should not be included in any POC form. Much of the information
15 sought is more properly the subject of a discovery request rather than a requirement to file with a
16 POC. Significant portions of many POCS may contain information that would comport with
17 Section 107 or 9018. However, such rulings should not be made in a vacuum. The primary
18 reason for this request by the Debtors is because it is likely that much of what they are requiring
19 claimants to file with their claims is more properly the subject of a discovery request than
20 documentation that should be included in a POC. Eliminating this material along with PII will
21 obviate the need for any sealing or confidentiality provisions in the proposed Order.⁷
22

23 **C. Failure to File a Timely Claim Does Not Discharge a Debt**

24 25. Federal Rule of Bankruptcy Procedure 3003(c)(2) provides that the effect of
25 failing to file a timely proof of claim is that: "...any creditor who fails to do so shall not be
26 treated as a creditor with respect to such claim for the purposes of voting and distribution." A
27 non-individual Chapter 11 debtor does not receive a discharge except through the provisions of
28 Bankruptcy Code Section 1141(d).

⁷ The proposed TCC Form does not suffer from these defects.

1 26. To the extent paragraph five of the proposed Order would effectively discharge
2 untimely filed claims, any such language should be stricken. Further, the U.S. Supreme Court, in
3 Pioneer Investment Services v. Brunswick Associates, L.P., 507 U.S. 380 (1993), held that an
4 untimely filed proof of claim may be allowed upon a showing of excusable neglect. Paragraph
5 five of the proposed Order would prohibit the filing of a late filed claim, precluding a creditor
6 from making a showing of excusable neglect. This language should be stricken from the
7 proposed Order.
8

9 **D. Superfluous/Misleading Language in the Order**

10 27. Paragraph 14 states that “nothing herein shall create, nor is intended to create, any
11 rights in favor of or enhance the status of any claim. . .” Paragraph 15 provides that the “Debtors
12 and Prime Clerk are authorized to take all steps necessary or appropriate to carry out this Order.”
13 These paragraphs should be stricken as the scope of the relief sought in the Motion is contained
14 in the Motion.

15 **V.**

16 **Conclusion**

17 28. To the extent that the Motion attempts to ignore the substantive provisions of
18 Bankruptcy Code Section 502(a) and corresponding Fed. R. Bankr. P. 3001(f) by requiring
19 entities that have already filed proofs of claim to file them again or be deprived of their rights,
20 the Motion should be denied. To the extent the Motion seeks to materially modify Official Form
21 410 by requiring a claimant to include PII and documentation that is more properly the subject of
22 a discovery request or be deprived of their rights, the Motion should be denied. To the extent the
23 Motion seeks to prevent open and public access to court records without any showing therefor, a
24 request occasioned primarily due to the request to include PII and other inappropriate material in
25 the proof of claim forms, the Motion should be denied.
26

27 WHEREFORE the U.S. Trustee requests that this Court issue an order denying the Motion
28 to the extent of this Objection and/or granting such other relief as this Court deems appropriate,

1 fair and just.

2 Dated: May 31, 2019

3 Andrew R. Vara
Acting United States Trustee, Region 3

4 /s/ Timothy S. Laffredi
5 Assistant United States Trustee
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